FTR Now

Human Rights Tribunal is not a Judicial Review Body

Date: November 15, 2011

The Supreme Court of Canada has issued a significant decision limiting the jurisdiction of a human rights tribunal to consider matters that have already been dealt with in another proceeding. In British Columbia (Workers' Compensation Board) v. Figliola, the Supreme Court considered whether the British Columbia Human Rights Tribunal had jurisdiction to hear a matter that had already been decided upon by the British Columbia Workers' Compensation Board. In a 5-4 split decision, a majority of the Court concluded that the answer to this question is "no." In this *FTR Now*, we discuss the implications of this decision for Ontario employers.

THE DECISION

The decision in *Figliola* dealt with the cases of three workers who had sought compensation for chronic pain from the British Columbia Workers' Compensation Board (the "Board"). The Board awarded compensation for chronic pain amounting to 2.5% of their total disability, pursuant to a Board policy limiting compensation for chronic pain to that amount.

Each of the three workers appealed to the Board's Review Division for a review of the chronic pain awards. They argued that the Board policy was patently unreasonable, unconstitutional under section 15 of the *Canadian Charter of Rights and Freedoms*, and discriminatory under British Columbia's *Human Rights Code* ("B.C. *Code*"). The Review Officer dismissed their appeal, holding, among other things, that the Board policy was not discriminatory under the B.C. *Code*.

Instead of applying for judicial review of the Review Officer's decision, the workers filed complaints with the British Columbia Human Rights Tribunal. In their complaints, the workers made the same arguments regarding the alleged discriminatory nature of the Board policy that they had at the Board's Review Division.

The Board brought a motion asking the Tribunal to dismiss the complaints on the basis that they had already been appropriately dealt with by the Review Division. In support of its motion to dismiss, the Board relied on section 27(1)(f) of the B.C. *Code*, which grants the Tribunal discretion to dismiss a complaint where "the substance of the complaint … has been appropriately dealt with in another proceeding."

The Tribunal dismissed the Board's motion and held that section 27(1)(f) of the B.C. *Code* did not apply in the circumstances of the case; therefore, the complaints before it could proceed. The Tribunal's decision was reversed on judicial review by the British Columbia Supreme Court, which held that the issues had already been decided by the Review Officer. The British Columbia Court of Appeal, however, restored the Tribunal's decision.

The Board appealed to the Supreme Court of Canada. The majority of the Court allowed the appeal, overturned the Tribunal's decision and dismissed the workers' complaints. In so deciding, the majority commented that the discretion afforded by section 27(1)(f) of the B.C. *Code* does not give the Tribunal authority to act as a review body with jurisdiction to consider, comment on and substitute decisions of other administrative tribunals. Instead, the Tribunal's discretion under section 27(1)(f) is limited to a consideration of three questions:

- whether there was concurrent jurisdiction to decide human rights issues;
- whether the previously decided legal issue was essentially the same as what is being complained of to the Tribunal; and
- whether there was an opportunity for the complainants or their privies to know the case to be met and have the chance to meet it.

Where the answer to these three questions are “yes,” the Tribunal should exercise its discretion and refuse to hear the complaint. As the Tribunal’s consideration had exceeded these limits, the majority of the Court held that the decision was patently unreasonable and should be overturned.

IMPLICATIONS

The Supreme Court’s decision in *Figliola* has broad implications for Ontario employers. Section 45.1 of the Ontario *Human Rights Code* provides that “the Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application.” Given the similarity between this provision and section 27(1)(f) of the B.C. *Code*, the Ontario Human Rights Tribunal is likely to consider the *Figliola* decision as similarly limiting its jurisdiction to hear duplicative complaints.

In particular, the majority decision in *Figliola* will be useful to employers who are faced with complaints in multiple forums arising out of the same factual circumstances: the decision will clearly limit the ability of human rights tribunals to consider these complaints, and restricts employees from “forum shopping” for different and better results. While *Figliola* concerned the jurisdiction to consider a complaint that had been previously dealt with by a workers’ compensation board, it is equally applicable to matters that have been dealt with by other administrative tribunals. As such, Ontario employers may utilize *Figliola* as a tool to seek the dismissal of a human rights complaint by an employee who has previously and unsuccessfully attempted to address the matter at arbitration, or in front of a labour relations board.

For more information about this decision, please contact your regular Hicks Morley lawyer.
